Supreme Court, U.S.
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No. 94-669

In The

Supreme Court of the United States

October Term, 1994

YADUNATH B. BADARAYAN,

Petitioner,

vs.

THOMAS DRAKE AND
CLEMSON UNIVERSITY,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Fourth Circuit

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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COUNTERSTATEMENT OF QUESTION PRESENTED

I. The Petition should be denied because the Court of Appeals correctly affirmed the District Court's order which held that the claims raised by the Petitioner were barred by the applicable statutes of limitation.

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OPINIONS AND JUDGMENTS BELOW

The unpublished Opinion of the Fourth Circuit Court of Appeals, affirming the District Court's grant of summary judgment, is reproduced in full at Appendix A-1. The Order of the United States District Court for the District of South Carolina, Greenville Division, granting summary judgment for the Respondents, is reproduced in full at Appendix A-2.

STATEMENT OF THE CASE

The complaint of the Petitioner, Yadunath B. Badarayan (hereinafter "Badarayan"), in this action is ultimately based entirely upon his dissatisfaction with a grade he received while enrolled in the Master of Science program in Electrical Engineering at Clemson University (hereinafter "Clemson") in the Fall of 1988. Development of certain factual events related to this grade are necessary as summary judgment, based upon the applicable statutes of limitation, was granted in favor of Respondents by the District Court and affirmed by the Court of Appeals.

At the end of the Fall 1988 semester, Badarayan was assigned a grade of "D" in the course ECE 625, Microcomputer Interfacing, by Professor Thomas Drake (hereinafter "Drake"). During the Spring semester of 1989, Badarayan consulted with Drake and other members of the Electrical Engineering Department concerning the grade. Drake ultimately refused to alter the grade, and Badarayan thereafter lodged a grade protest with the Graduate School administration on or about March 30,

1989. A Grievance Committee was formed in September 1989 to hear the matter after informal efforts to resolve it were unsuccessful. The Grievance Committee held three meetings with Badarayan in November and December of 1989. On December 20, 1989, the Grievance Committee found no grounds upon which to recommend that the course grade be changed and recommended that the grade stand as entered. On January 15, 1990, Max Lennon, the President of Clemson University, affirmed the recommendation of the Grievance Committee in a letter to Badarayan.

Upon a request made by Badarayan in January 1990, the United States Department of Education thoroughly investigated Badarayan's complaints of discrimination by Clemson. The department's Office for Civil Rights concluded that the University did not violate Title VI or its implementing regulations and informed Badarayan of its findings on June 22, 1990. Badarayan appealed the findings and requested a reconsideration review. The Office for Civil Rights affirmed its conclusions in an October 25, 1990 letter.

Badarayan filed his complaint in the U.S. District Court alleging breach of contract and negligence on January 20, 1993. The District Court held that both claims asserted by Badarayan accrued on January 15, 1990, the date upon which the President of Clemson University affirmed the recommendation of the Grievance Committee, since the decision of the University was final at that point and the administrative appeal process had run its course. Further, the District Court held that the two year period for filing the negligence claim under the South Carolina Tort Claims Act [South Carolina Code Ann.

§ 15-78-110 (Law. Co-op. 1976 and Supp. 1993)] expired on January 16, 1992, and that the three year period for filing the contract claim [South Carolina Code Ann. § 15-3-530(1) (Law. Co-op. 1976 and Supp. 1993)] expired on January 16, 1993.

Relying substantially upon the reasoning of the District Court, the Court of Appeals affirmed the District Court's decision. The Court of Appeals noted, however, that the record revealed that Badarayan's causes of action actually accrued substantially earlier than January 15, 1990. Because this determination did not affect the disposition of the case, the Court of Appeals declined to disturb the District Court's finding. Further, the Court of Appeals held that to the extent that Badarayan had appealed from the District Court's failure to address his vaguely pled claim of discrimination, Badarayan had not stated a claim of sufficient specificity for the District Court to address. On July 13, 1994, the Court of Appeals denied Badarayan's petition for rehearing.

SUMMARY OF THE REASONS FOR DENYING THE PETITION

The Petition sought by Badarayan should be denied on at least two grounds. First, there were no issues raised at any point in the lower court proceedings or in the Petition to this Court which would invoke the jurisdiction of the United States Supreme Court under Article 3 of the United States Constitution or Rule 10, Supreme Court Rules. This case is essentially a grade dispute, and this Court is an improper forum for its resolution.

Second, both the District Court and the Court of Appeals correctly decided this case on the merits by holding that both of Badarayan's causes of action are barred by the applicable statutes of limitation. Badarayan filed his claim outside the two year period applicable to his negligence cause of action and outside the three year period applicable to his breach of contract cause of action. As a result, this Court should deny the Petition.

ARGUMENT

I. THE PETITION SHOULD BE DENIED AS THERE ARE NO SPECIAL OR IMPORTANT REASONS FOR SUPREME COURT REVIEW.

The Petition should be denied because there were no issues raised at any point in the lower court proceedings or in the Petition to this Court which would involve the jurisdiction of the United States Supreme Court under Article 3 of the United States Constitution or Rule 10, Supreme Court Rules. The Fourth Circuit Court of Appeals' decision is not in conflict with the decisions of any other United States Court of Appeals on the same issues nor does the decision indicate or sanction a departure from the accepted and usual course of judicial proceedings calling for an exercise of this Court's power of supervision. It involves no unsettled questions of federal law, and this case involves no special matters of importance to the public. This case is essentially a grade dispute, and this Court is an improper forum for its resolution.

II. THE PETITION SHOULD BE DENIED AS THE DECISIONS OF THE LOWER COURTS ARE CLEARLY CORRECT.

This case deals with well settled and clearly applicable statutes of limitation. The Court of Appeals affirmed that the District Court below correctly applied S.C. Code Ann. § 15-78-110 (Law. Co-op. 1976 and Supp. 1993) (reproduced in full at Appendix A-8) to Badarayan's negligence claim since Badarayan had asserted a negligence cause of action against a governmental entity and its employee. *See* South Carolina Tort Claims Act, S.C. Code Ann. §§ 15-78-10 to -190 (Law. Co-op. 1976 and Supp. 1993). Section 15-78-110 provides for a two year period for bringing claims under the Tort Claims Act. The statute begins to run on the date the loss was or should have been discovered, not when the claimant develops a full-blown theory of recovery. *Tanyel v. Osborne*, 444 S.E.2d 329 (S.C. Ct. App. 1994).

Since Badarayan did not file his complaint until January 20, 1993, his negligence cause of action was clearly barred by the statute. The District Court held that Badarayan's negligence claim accrued on January 15, 1990. The Court of Appeals ruled that Badarayan's negligence claim actually accrued substantially earlier than January 15, 1990. Regardless of which date is utilized, the two year period for filing the negligence cause of action expired long before January 20, 1993.

The Court of Appeals affirmed that the District Court below correctly applied S.C. Code Ann. § 15-3-530(1) (Law. Co-op. 1976 and Supp. 1993) (reproduced in full at Appendix A-8) to Badarayan's breach of contract claim.

Section 15-3-530(1) is the correct statute of limitations since this cause of action allegedly arose after April 5, 1988 and is an action upon a contract, obligation, or liability, express or implied. Section 15-3-530(1) provides for a three year period for bringing breach of contract claims. The statute begins to run when the claimant knows or should have known that the contract had been breached. *Santee Portland Cement v. Daniel International Corp.*, 299 S.C. 269, 384 S.E.2d 693 (1989) (holding the "discovery rule" applicable to contract causes of action).

The District Court held that Badarayan's breach of contract claim accrued on January 15, 1990 and was therefore barred when Badarayan filed his complaint on January 20, 1993. In affirming that the breach of contract cause of action was untimely, the Court of Appeals ruled that Badarayan's cause of action actually accrued substantially earlier than January 15, 1990.[1] In so noting, the Court of Appeals referenced *Santee Portland Cement, supra*, and *Nowlin v. General Tel. Co.*, 426 S.E.2d 114 (S.C. Ct. App. 1992), *aff'd*, 444 S.E.2d 508 (S.C. 1994), which clearly establish that in breach of contract cases, the statute of limitation begins to run when the claimant knew or should have known that the contract had been breached and is not tolled pending the outcome of an appeal thereunder.

Without expressly stating, the Court of Appeals indicated its agreement with Respondents' position below, that March 30, 1989 was the correct accrual date for both

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[1] This determination did not affect the disposition of the case since an earlier accrual date would only render the identical result, i.e. the cause of action would remain time barred.

of Badarayan's causes of action.[2] Badarayan knew that his grade was not to be altered by Professor Drake on or about March 30, 1989 as this is the date upon which Badarayan lodged his grade protest. An injured party must act with promptness where the facts and circumstances put him on notice that some right of his has been invaded or that some claim against another party might exist. *Snell v. Columbia Gun Exchange*, 278 S.E.2d 333 (S.C. 1981). In summary, regardless of which of the above-discussed accrual dates is utilized, both of Badarayan's causes of action are clearly barred by the applicable statutes of limitation.

The Court of Appeals also correctly affirmed the reasoning of the District Court's refusal to equitably or otherwise estop the Respondents from raising the statutes of limitation defenses. In order to equitably or otherwise estop the Respondents from arguing the statutes of limitation defenses, Badarayan would have to have shown that the Respondents fraudulently induced him to refrain from filing his suit until the statute had expired. *See*

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[2] Footnote 2 of the Court of Appeals' unpublished Opinion states that "[t]he record reveals that the cause of action actually accrued *substantially* earlier" than January 15, 1990. (Emphasis supplied). Other than March 30, 1989, the only alternative accrual date advocated by the Respondents below was December 20, 1989, the date upon which the Petitioner knew that the Grievance Committee refused to alter the Petitioner's grade. While December 20, 1989 is somewhat earlier than January 15, 1990, March 30, 1989 is *substantially* earlier than January 15, 1990. In any event, this speculation is merely academic since, as noted above, the District Court's ruling and the Court of Appeals' affirmation remain unaffected regardless of which accrual date is utilized.

Brayboy v. Ewing, 428 S.E.2d 731, 732 (S.C. App. 1993). Since there is no allegation and no evidence in the record that the Respondents did anything to influence the timing of Badarayan's lawsuit, Badarayan is not entitled to an equitable tolling of the limitations periods.[3]

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[3] In their "Informal Brief of Appellees" filed in the Fourth Circuit Court of Appeals, Respondents submitted additional arguments to the Court of Appeals why Badarayan's causes of action should be dismissed. While the Court of Appeals' ruling made it unnecessary for that court to address these arguments, Respondents summarize them here for the benefit of this Court:

(1) All of Badarayan's causes of action should have been dismissed below for lack of jurisdiction and failure to state a claim upon which relief can be granted as Badarayan's dissatisfaction with a grade and his disputes arising therefrom are not properly resolved in a federal court. *Regents of University of Michigan v. Ewing*, 474 U.S. 214, 225 (1985).

(2) Badarayan's negligence cause of action against Respondent Drake is governed by the South Carolina Tort Claims Act and should have been dismissed below as there is no allegation and no indication in the record that Respondent Drake's conduct was outside the scope of his official duty or that it constituted actual fraud, actual malice, intent to harm, or a crime involving moral turpitude. S.C. Code Ann. § 15-78-70(a) & (b) (Law. Co-op. 1976 and Supp. 1993).

(3) Badarayan's breach of contract cause of action against Respondent Drake should have been dismissed below as Badarayan failed to allege the existence of a contract between himself and Respondent Drake. *See DeBerry v. McCain*, 275 S.C. 569, 274 S.E.2d 293 (1981).

CONCLUSION

As the lower courts correctly decided the statute of limitations issue and as there are no issues raised in the Petition invoking the jurisdiction of the United States Supreme Court, this Court should deny the Petition for Writ of Certiorari.

Respectfully submitted,

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(4) Badarayan's negligence cause of action against Respondent Clemson University is governed by the South Carolina Tort Claims Act and should have been dismissed below as Respondent Clemson University is not liable for a loss resulting from the exercise of discretion or judgment of its employees nor can it be sued for breach of the responsibility or duty involving the supervision of a student except where that responsibility or duty is exercised in a grossly negligent manner. S.C. Code Ann. § 15-78-60(5) & (25) (Law. Co-op. 1976 and Supp. 1993).

(5) Badarayan's breach of contract cause of action is barred by the South Carolina Statute of Frauds as there are no allegations in Badarayan's complaint that the alleged agreement between Badarayan and the Respondents could be performed within one year or that the alleged agreement was in writing. S.C. Code Ann. § 32-3-10(5) (Law. Co-op. 1976 and Supp. 1993).

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 93-2185

YADUNATH B. BADARAYAN,

Plaintiff-Appellant,

v.

THOMAS DRAKE; CLEMSON UNIVERSITY,

Defendants-Appellees.

Appeal from the United States District Court for the District of South Carolina, at Greenville. G. Ross Anderson, Jr., District Judge. (CA-93-109-3AK)

Submitted: April 19, 1994 Decided: June 16, 1994

Before PHILLIPS, NIEMEYER, and LUTTIG, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Yadunath B. Badarayan, Appellant Pro Se. Floyd Matlock Elliott, HAYNSWORTH, MARION, McKAY & GUÉRARD, Greenville, South Carolina, for Appellees.

Unpublished opinions are not binding precedent in this circuit. See I.O.P. 36.5 and 36.6.

PER CURIAM:

Appellant appeals from the district court's order granting summary judgment[1] against Appellant in his diversity action. Our review of the record and the district court's opinion accepting the recommendation of the magistrate judge discloses that this appeal is without merit. Accordingly we affirm substantially on the reasoning of the district court.[2] *Badarayan v. Drake*, No. CA-93-109-3AK (D.S.C. Aug. 11, 1993). To the extent that Appellant appeals the district court's failure to address his vaguely pled claim of discrimination by Appellees, we find that Appellant did not state a claim of sufficient specificity for the district court to address. *See Beaudett v. City of Hampton*, 775 F.2d 1274, 1278 (4th Cir. 1985), *cert. denied*, 475 U.S. 1088 (1986). We dispense with oral argument because the facts and legal contentions are

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[1] The motion was filed as a motion to dismiss but the district court advised Appellant that it would be treated as a motion for summary judgment.

[2] We note, however, that the district court held that the Appellant's cause of action accrued on January 15, 1990. The record reveals that the cause of action actually accrued substantially earlier. *See Santee Portland Cement Co. v. Daniel Int'l Corp.*, 384 S.E.2d 693, 694 (S.C. 1989); *see also Nowlin v. General Tel. Co.*, 426 S.E.2d 114, 116 (S.C. Ct. App. 1992). Because this determination does not affect the disposition of the case, we decline to disturb the district court's finding.

adequately presented in the materials before the Court and argument would not aid the decisional process.[3]

AFFIRMED

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[3] Appellant's motion to expedite is now moot and is dismissed for that reason.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

Yadunath B. Badarayan, Plaintiff, v. Thomas Drake and Clemson University, Defendants.	ORDER C.A. No. 6:93-109-3AK (Filed Aug. 11, 1993)

This matter is before the Court for review of the magistrate's Report and Recommendation made in accordance with 28 U.S.C. § 636(b)(1)(A) and Local Rule 19.02(b)(2)(E) for the District of South Carolina.

The magistrate makes only a recommendation to this court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the court. *Matthews v. Weber*, 423 U.S. 261, 270-71 (1976). The court is charged with making a *de novo* determination of those portions of the Report and Recommendation to which specific objection is made, and the court may accept, reject or modify, in whole or in part, the recommendation of the magistrate, or recommit the matter to him with instructions. 28 U.S.C. § 636(b)(1). The plaintiff filed timely objections to the Report and Recommendation of the magistrate.

The plaintiff, acting *pro se*, is a foreign national who was formerly a graduate student at Clemson University seeking a Master of Science degree in electrical engineering. At the end of the Fall, 1988 semester, defendant Drake, a professor at the University gave the plaintiff a grade of "D" in a course entitled Microcomputer Interfacing. The plaintiff challenged this grade pursuant to the grievance procedures of the University. On December 20, 1989, the Grievance Committee recommended that the grade stand as entered. On January 15, 1990, the President of the University accepted the recommendation of the Grievance Committee. The President's action made the decision final. The plaintiff complained to the United States Department of Education, the South Carolina Human Affairs Commission, and the American Civil Liberties Union, all to no avail.

On January 20, 1993, the plaintiff filed this action alleging breach of contract and negligence on the part of the Professor and the University. As an initial matter, the court finds that jurisdiction in this case is proper.[1] Furthermore, this court agrees with the magistrate that the negligence claim can only be raised pursuant to the provisions of the South Carolina Tort Claims Act, S.C. Code Ann. § 15-78-10 to -190 (Supp. 1992). Clearly, this case

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[1] The defendants rely on *Regents of University of Michigan v. Ewing*, 474 U.S. 214 (1985) as authority for the proposition that this court does not have jurisdiction where the underlying dispute concerns an academic course grade. This reliance is misplaced. In *Ewing* the Court found that such claims are cognizable in a federal court. However, the review is under a very narrow and rigorous standard which commands "great respect for the faculty's professional judgment." *Id.* at 225.

concerns a state employee exercising "discretion or judgment." S.C. Code Ann. § 15-78-60(5) (Supp. 1992).

This court finds that as a matter of law, the claims raised in this complaint are barred by the applicable statutes of limitations. Reviewing the record *de novo*, the court finds that the causes of action accrued on January 15, 1990 when the President of the University accepted the recommendation of the Grievance Committee. The decision of the University was final at that point and the administrative appeal process had run its course. The period for filing the contract claim was three years and expired on January 16, 1993. *See* S.C. Code Ann. § 15-78-110 (Supp. 1992). The plaintiff filed his complaint on January 20, 1993, clearly outside both periods. Therefore, the plaintiff's claims are barred by the applicable statutes of limitations.

In his objections to the Report and Recommendations, the plaintiff essentially argues that the statutes of limitation were tolled while the plaintiff sought relief from the United States Department of Education. However, in order to have this court equitably estop the defendants from raising the limitations defense, the plaintiff must show that the defendants fraudulently induced him to refrain from filing his lawsuit. *See Brayboy v. Ewing*, 428 S.E. 2d 731, 732 (S.C. App. 1992). There is no allegation, and no indication in the record, that the defendants did anything to influence the timing of the lawsuit. Therefore, the plaintiff is not entitled to any equitable tolling of the limitations periods.

THEREFORE, IT IS ORDERED that defendant's motion is granted and that this case is dismissed.

/s/ G. Ross Anderson, Jr.
G. ROSS ANDERSON, JR.
UNITED STATES DISTRICT JUDGE

Anderson, South Carolina

August 10, 1993.

South Carolina Code Ann. § 17-78-110. Statute of Limitations.

Except as provided for in Section 15-3-40, any action brought pursuant to this chapter is forever barred unless an action is commenced within two years after the date the loss was or should have been discovered; provided, that if the claimant first filed a claim pursuant to this chapter then the action for damages based upon the same occurrence is forever barred unless the action is commenced within three years of the date the loss was or should have been discovered.

South Carolina Code Ann. § 15-3-530(1). Three years or six years.

[For causes of action arising or accruing on or after April 5, 1988, the following provisions will apply:]

Within three years:

(1) an action upon a contract, obligation, or liability, express or implied, excepting those provided for in Section 15-3-520.